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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,621	01/10/2002	Ugo Siepel	294-109 PCT/US	7146
	7590	10-24/2003	EXAMINER	
Ronald J Baron Hoffmann & Baron 6900 Jericho Turnpike Syosset, NY 11791			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/936,621

Applicant(s)

SIEPEL ET AL.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Claims 1 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite. The preamble states a method for obtaining an expanded foodstuff; yet, the body of the claim does not recite how the expanded foodstuff is obtained. The claim only recites the steps of obtaining a composition comprising a non-cereal amylopectin starch. It is not clear how the expanded foodstuff is made. Step ii is unclear; it is not clear what applicant mean by heating a part of the composition. How can the heating be done to a part of the composition? Also, it is not clear what applicant mean by " an expanded foodstuff".

In claim 9, the term " expanded foodstuff" has the same problem as in claim 1.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 4-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Jeffcoat et al.

Jeffcoat et al disclose stabilized, crosslinked waxy potato starch and the starch is used in food compositions. (see column 2 lines 38-46 and col. 4 lines 14-25)

Jeffcoat et al disclose the limitations of the above cited claims. Waxy starch is another name for amylopectin starch. Since the same starch is disclosed, it is inherent the content of amylopectin is the same as claimed. The recitation "for preparing an expanded foodstuff" is an intended use of the composition and does not determine the patentability of the composition.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 9-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Hulle et al in view of Jeffcoat et al.

Van Hulle et al disclose methods for preparing puffed snack products. The products are formed from gelatinized doughs whose total amylopectin starch content ranges between about 30-95%. The method comprises the steps of mixing amylopectin starch together with other ingredients to form a dough, cooking the dough in an extruder

to gelatinize the dough, shaping the dough into pieces, drying the pieces and puffing the pieces. (see col. 5 lines 1-13 and col. 7)

Van Hulle et al do not disclose the amylopectin starch is non-cereal amylopectin starch obtained from potato, heating the composition to a temperature above the glass transition temperature and cooling.

Jeffcoat et al disclose a stabilized, crosslinked waxy potato starch.

It would have been obvious to one skilled in the art to use other known source of high amylopectin-containing starch to make the amylopectin dough disclosed by Van Hulle et al. It would have been obvious to one skilled in the art to use waxy potato starch such as the one disclosed by Jeffcoat et al when one wants the flavor of potato and still meeting the amylopectin content requirement. As to the heating to above glass transition temperature, the dough in the Van Hulle et al process is heated to gelatinize the dough; thus, it is obvious the dough is heated to above the glass transition temperature. The dough is dried at lower temperature; thus, it is obvious the dough is cooled to below the glass transition temperature. The dough pieces are puffed which will cause expansion and the product is a snack that has a glazed, sugar coating.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Tuesday, Wednesday and Friday. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

October 17, 2003

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